

### **REMARKS**

Applicants thank the Examiner for the thorough examination given the present application.

#### ***Status of the Claims***

Claims 1-2, 4-15, and 17-21 are pending in the above-identified application with claims 1, 4-5, 11-12, and 21 standing ready for further action on the merits and remaining claims 2, 6-10, 13-15, and 17-20 being currently withdrawn from consideration. Claim 1 has been amended herein. Support for the recitations to claim 1 can be found in the present specification, *inter alia*, at page 3, line 16 to page 4, line 29 as well as Figures 1 and 2. Thus, no new matter has been added.

Applicants submit that the present Amendment is merely formal in nature, reduces the number of issues under consideration, and places the case in condition for allowance. Alternatively, entry of the present amendment is proper to place the claims in better form for appeal.

In view of the following remarks, Applicants respectfully request that the Examiner withdraw all rejections and allow the currently pending claims.

#### ***Issues over the Cited References***

1) The Examiner has rejected claims 1, 11-12, and 21 under 35 U.S.C. § 102(a) as being anticipated by WO '285 (WO 98/42285).

2) The Examiner has rejected claim 4 under 35 U.S.C. § 103(a) as being unpatentable over WO '285.

3) The Examiner has also rejected claim 5 under 35 U.S.C. § 102(a) as being anticipated by or, in the alternative, under 35 U.S.C. § 103(a) as being obvious over WO '285.

Applicants respectfully traverse. Reconsideration and withdrawal of these rejections are respectfully requested based on the following considerations.

Legal Standard for Determining Anticipation

“A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). “When a claim covers several structures or compositions, either generically or as alternatives, the claim is deemed anticipated if any of the structures or compositions within the scope of the claim is known in the prior art.” *Brown v. 3M*, 265 F.3d 1349, 1351, 60 USPQ2d 1375, 1376 (Fed. Cir. 2001) “The identical invention must be shown in as complete detail as is contained in the ... claim.” *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). The elements must be arranged as required by the claim, but this is not an *ipsissimis verbis* test, i.e., identity of terminology is not required. *In re Bond*, 910 F.2d 831, 15 USPQ2d 1566 (Fed. Cir. 1990).

Legal Standard for Determining Prima Facie Obviousness

MPEP 2141 sets forth the guidelines in determining obviousness. First, the Examiner has to take into account the factual inquiries set forth in *Graham v. John Deere*, 383 U.S. 1, 17, 148 USPQ 459, 467 (1966), which has provided the controlling framework for an obviousness analysis. The four *Graham* factors are:

- (a) determining the scope and content of the prior art;
- (b) ascertaining the differences between the prior art and the claims in issue;
- (c) resolving the level of ordinary skill in the pertinent art; and
- (d) evaluating any evidence of secondary considerations.

*Graham v. John Deere*, 383 U.S. 1, 17, 148 USPQ 459, 467 (1966).

Second, the Examiner has to provide some rationale for determining obviousness. MPEP 2143 sets forth some rationales that were established in the recent decision of *KSR International Co. v. Teleflex Inc.*, 82 USPQ2d 1385 (U.S. 2007). Exemplary rationales that may support a conclusion of obviousness include:

- (a) combining prior art elements according to known methods to yield predictable results;

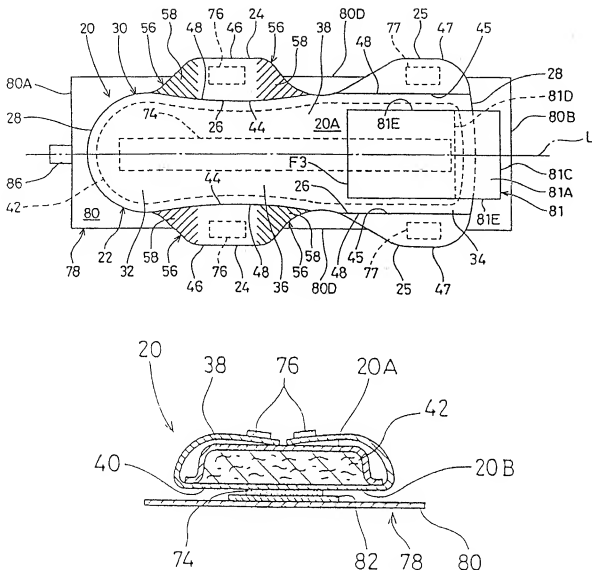
- (b) simple substitution of one known element for another to obtain predictable results;
- (c) use of known technique to improve similar devices (methods, or products) in the same way;
- (d) applying a known technique to a known device (method, or product) ready for improvement to yield predictable results;
- (e) “obvious to try” – choosing from a finite number of identified, predictable solutions, with a reasonable expectation of success
- (f) known work in one field of endeavor may prompt variations of it for use in either the same field or a different one based on design incentives or other market forces if the variations are predictable to one of ordinary skill in the art;
- (g) some teaching, suggestion, or motivation in the prior art that would have led one of ordinary skill to modify the prior art reference or to combine prior art reference teachings to arrive at the claimed invention.

As the MPEP directs, all claim limitations must be considered in view of the cited prior art in order to establish a *prima facie* case of obviousness. *See* MPEP 2143.03.

#### Distinctions over the Cited References

On page 2 of the outstanding Office Action, the Examiner asserts that WO ‘285 discloses the limitation “said left and right wing portions extending along the entire left and right sides of said absorbent body.” However, Figure 1 of WO ‘285 (shown below) shows that the pair of first flaps 24 and the pair of second flaps 25 are not connected. Thus, the left and right flaps of WO ‘285 do not extend along the entire left and right sides of the main body portion 22.

Furthermore, as is clearly seen from the reference numerals 45 and 48 of Figure 1 and the cross section of Figure 3 of WO ‘285 (shown below), the backsheet and topsheet are directly sealed to thereby completely block the leakage of liquid flowing from the absorbent core to the side portions of the absorbent article in WO ‘285.



The structure of WO '285, absorbing liquid in the absorbent layer of the main body and blocking the absorbed liquid so as not to flow toward the front and rear flap portions, was not a technique peculiar to WO '285 but was common in the art at the time the invention of WO '285 was made. The rear flaps of WO '285 (second flaps) are made only of the backsheet, which is the same as the first flaps. From this structure, the idea of completely blocking the liquid diffusion from the absorbent core of the main body was ordinarily shared in the art at the time the invention of WO '285 was made.

In stark contrast, the present invention has drastically changed the conventional idea that liquid should be blocked within the main body. The present invention provides rear flaps (the left and right wing portions) which widely cover the wearer's buttocks to positively absorb liquid.

As recited in claim 1, the absorbent core arranged in the rear flaps covering the wearer's buttocks is a sheet-like material. A thick and stiffened absorbent core impairs the wearer's comfortable feel during use, but an absorbent core of a sheet-like material has less absorptive capacity and slow liquid diffusion. However, with the claimed structure of the rear wing portion and by embossing the absorbent sheet, the diffusion of the absorbed liquid is controlled, and efficient use of the whole area of the absorbent core is achieved.

On page 6 of the outstanding Office Action, the Examiner asserts that the above features (i.e., an article where liquid is not blocked from the main body) are not recited in the rejected claims. Applicants respectfully traverse. However, claim 1 has been amended to more explicitly recite these features.

Moreover, the Examiner relies on Ahr '924 (US 4,321,924) to disclose the structure of the left and right wing portions of the present invention. The Examiner uses the disclosure of Ahr '924 to provide the structure of WO '285 based on page 11 of WO '285. Specifically, WO '285 recites, "Suitable materials for the components of the main body portion 22, and some of the various configurations in which such components can be assembled are described generally in [Ahr '924]." However, the main body portion 22 of WO '285 "comprises the portion of the sanitary napkin without the first flaps 24 and the second flaps 25" (page 10; emphasis added). Thus, Ahr '924 only discloses the structure of the main portion of WO '285 and not the flaps of WO '285. Therefore, the Examiner cannot rely on Ahr '924 to disclose the structure of the flaps of WO '285.

In summary, according to the structure of the sanitary napkin as recited in independent claim 1, the discharged liquid is conveyed to the upper absorbent layer and migrated into the lower absorbent layer, while spreading over the horizontal direction of the upper layer. However, the liquid migration from the upper layer to the lower layer is not so fast because (1) the lower layer is a discrete part from the upper layer and (2) the lower layer comprises the rear

flap portion absorbent core (the lower layer) which has reduced dispersibility of physiological solution, i.e., the absorption area is 80 cm<sup>2</sup> or less after the passage of one minute of time, and is made of an embossed absorption paper. Due to these characteristic features, even if the liquid flows along the wearer's skin towards the buttocks, the liquid is reliably absorbed by the rear flap (i.e., lower layer). This advantage is not obtained if the liquid quickly migrates into the rear flap from the topsheet.

Ahr '924 does not disclose the rear flaps of the present invention, which cover the buttocks. Thus, Ahr '924 does not disclose arranging an absorbent sheet in the rear flaps. WO '285 discloses rear flaps that are made of a resin film. However, WO '285 does not disclose arranging an absorbent core in the rear flaps.

Thus, for all the reasons given above, the present invention is not anticipated by WO '285 since the reference does not teach or provide for each of the limitations recited in the pending claims.

Moreover, a *prima facie* case of obviousness has not been established. To establish a *prima facie* case of obviousness of a claimed invention, all the claim limitations must be disclosed by the cited references. As discussed above, WO '285 fails to disclose all the claim limitations of independent claim 1, and those claims dependent thereon. Accordingly, the reference does not render the present invention obvious.

Furthermore, the cited reference or the knowledge in the art provides no reason or rationale that would allow one of ordinary skill in the art to arrive at the present invention as claimed. Therefore, withdrawal of the outstanding rejections is respectfully requested. Any contentions of the USPTO to the contrary must be reconsidered at present.

**CONCLUSION**

A full and complete response has been made to all issues as cited in the Office Action. Applicants have taken substantial steps in efforts to advance prosecution of the present application. Thus, Applicants respectfully request that a timely Notice of Allowance issue for the present case clearly indicating that each of claims 1, 4-5, 11-12, and 21 are allowed and patentable under the provisions of title 35 of the United States Code.

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact Chad M. Rink, Reg. No. 58,258 at the telephone number of the undersigned below, to conduct an interview in an effort to expedite prosecution in connection with the present application.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. §§ 1.16 or 1.17; particularly, extension of time fees.

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Respectfully submitted,

By 

John W. Bailey

Registration No.: 32,881

BIRCH, STEWART, KOLASCH & BIRCH, LLP

8110 Gatehouse Road

Suite 100 East

P.O. Box 747

Falls Church, Virginia 22040-0747

(703) 205-8000

Attorney for Applicants